

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

**FILED**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOE WILLIE NUNLEY,

Defendant.

JUL 30 2019

U. S. DISTRICT COURT  
EASTERN DISTRICT OF MO  
CAPE GIRARDEAU

Case No. 1:18CR00183 SNLJ

**ORDER**

This case is before the Court on defendant's motion to suppress, #36, to which the government has filed a response in opposition, #38. At the outset, this Court notes that defendant waived the filing of pretrial motions on March 1, 2019, #22, and therefore his motion can be denied in that regard, not to mention that it is untimely filed as well. That said, this Court will gratuitously address the motion on the merits.

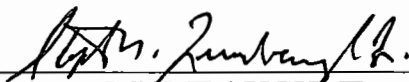
The parties appear to agree that the facts presented are not contested and that the disposition of the motion is a matter of law. Indeed, the sole issue raised is whether the fruits of a search warrant served at defendant's residence on November 9, 2018, should be suppressed under the Exclusionary Rule because of a violation of Federal Rule of Criminal Procedure 41(f)(1)(C). That rule requires officers serving a search warrant to "give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken or leave a copy of the warrant and receipt at the place where the officer took the property." *Id.* Here

the warrant was accompanied by two attachments, one describing the location to be searched and the other describing the items to be seized. As it turned out, the officers left the search warrant itself at the residence searched, along with an inventory of the items seized, but they neglected to leave the two attachments. This failure, defendant argues, necessitates suppression of the evidence seized.

This Court disagrees. Obviously, the failure to leave copies of the two attachments is simply a technical violation of the rule. In *United States v. Riesselman*, 646 F.3d 1072, 1078 (8th Cir. 2011), the Court held that because Rule 41 is a statutory rule that is not required by the Fourth Amendment, exclusion of evidence is not the appropriate remedy, that is, unless "a defendant is prejudiced or if reckless disregard of proper procedure is evident." *Id.* (quoting *United States v. Spencer*, 439 F.3d 905, 913 (8th Cir. 2006)). Here, defendant makes no attempt to claim prejudice and what little evidence defendant shows of the officers' reckless disregard of proper procedures falls woefully short.

For these reasons, the motion to suppress is denied.

So ordered this 30th day of July, 2019.

  
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STEPHEN N. LIMBAUGH, JR.  
UNITED STATES DISTRICT JUDGE